

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 69.2(m) and) RM 8723
(ee) of the Commission's Rules)
to Include Independent Public)
Payphones Within the "Public)
Telephone" Exemption from End)
User Common Line Access Charges)

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OPPOSITION OF GTE

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE") submit the following Comments in opposition to the Petition for Rulemaking ("Petition") filed by the American Public Communications Council ("APCC" or "Petitioner") on October 23, 1995 which appeared on Public Notice, Report No. 2111, November 2, 1995. For reasons stated below, the Commission should reject APCC's request to make piecemeal changes to Part 69. Instead, the Commission should move forward with its commitment to implement broad based access charge reform.

INTRODUCTION

APCC requests that the Commission amend Part 69 to exclude independent payphone providers ("IPPs") from paying the End User Common Line ("EUCL") charge. To accomplish this, the Petitioner asks the Commission to include IPPs within the definition of "public telephones" and to clarify that

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operators of such phones will not be deemed "end users." By this change, IPPs would be exempt from paying the EUCL charge, even though they would continue to use local exchange facilities of the LECs.

APCC justifies the need for a rulemaking based on the premise that IPPs operate in manner identical to LECs. APCC argues that IPPs should be exempt from paying the EUCL charge since LEC payphones are not subject to the EUCL charge. Further, APCC contends that the charging of EUCL charges to IPPs is discriminatory and does not reflect the changes in the competitive environment for pay telephone services.

For the reasons stated herein, revision of the access charge rules to exempt IPPs from payment of the EUCL charge is wholly unwarranted. The Commission should act promptly to reform Part 69 to accommodate increasing competition in local and access markets in a manner that accommodates all market participants, not just IPPs.

I. REVISION OF THE ACCESS CHARGE RULES TO EXEMPT IPPs FROM PAYMENT OF THE EUCL CHARGE IS UNWARRANTED

APCC argues that since IPPs operate in a manner similar to LECs in the provision of public payphones, IPPs should be exempted from end user charges. Although both IPPs and LECs provide public payphones to the public, IPP operations are not identical to those of LECs and are not subject to the same

public service obligations.¹ Notwithstanding any perceived similarities between IPP and LEC payphone operations, there is no justification for exempting IPPs from paying the EUCL charge for the local exchange line they use between their paystation location and the LEC central office.

In reality, APCC's Petition seeks to gain favorable treatment for IPPs at the direct expense of other access ratepayers. Simply put, common lines are common lines, irrespective of customer connected to the end of the facility.² IPPs use local exchange facilities just as any other end user to originate or terminate interstate communications through many of the same interexchange carriers used by residential and business customers.

There is no justification to exclude IPPs from payment of the EUCL charge while other similarly situated customers, *i.e.*, local residential and business subscribers, continue to contribute to interstate common line cost recovery through end user charges. Section 202(a) of the Communications Act prohibits discrimination between customers without reasonable justification.

¹ APCC members are completely free to determine the location of their payphones. Many LEC payphones, however, are located where they are due to state utility commission mandate. This is particularly true of companies such as GTE which serve many small town and rural exchanges across the country.

² While the Commission has determined that it is reasonable to charge different EUCL rates for different types of end users, it has never exempted any local exchange service that utilizes physical common line plant facilities from payment of the EUCL charge.

APCC has presented no evidence that demonstrates that it should be granted favorable treatment over local exchange service customers.

APCC suggests that rather than assessing IPPs the EUCL charge for local exchange facilities they use, IXCs should bear this cost through higher CCL charges. For those EUCL charges currently set at the cap, exemption of IPP lines would result in a shift in cost recovery to the CCL element.³ However, to the extent that current EUCL charges are set below the mandated cap, an IPP exemption could potentially result in an increase in the EUCL charge to all other end user subscribers.⁴

APCC presents no justification for shifting the recovery of common line costs from IPP customers to IXC or other end user customers. Indeed, it would constitute bad public policy to amend the rules to simply shift cost recovery from one user to another without assessing the competitive implications of doing so. For example, it cannot be assumed that LECs can simply increase existing CCL charges nor should they be required to do so. Increasing those rates would only worsen the marketplace disruptions that are caused by the existing CCL rate element structure.

³ See 47 C.F.R. §69.203.

⁴ Since the LEC would continue to incur the same loop costs, the base factor portion of the common line revenue requirement would not change; however, the number of access lines to which the EUCL charge would be assessed would be reduced, resulting in an increase in the EUCL charge.

Finally, APCC's contends that the practice of assessing EUCL charges to IPPs, and not LEC paystation lines, harms competition in the pay telephone industry. The facts do not support this contention. While IPPs did not exist when the original access charge rules were established, they have flourished since that time and have done so under the existing rules which require them to pay EUCL charges just as any other end user is required to do.

II. THE COMMISSION MUST NOT MAKE PIECEMEAL CHANGES TO ACCESS CHARGE RULES BUT INSTEAD, SHOULD ACT PROMPTLY TO REFORM PART 69 TO ACCOMMODATE INCREASING COMPETITION IN LOCAL AND ACCESS MARKETS AND RAPID TECHNOLOGICAL CHANGE

APCC contends that since the competitive environment has changed in the pay telephone industry since the inception of the Commission's Part 69 access charge rules, the rules should be changed to reflect the "new reality." However, competition for many other telecommunications services, which are equally impacted by the Part 69 rules, did not exist as well. GTE agrees that the Commission needs to address the impact of competitive changes on its existing regulatory frameworks and has advocated reform of the access charge rules for years.⁵ In fact, the Commission has recently signaled its readiness to implement such a rulemaking proceeding.⁶

⁵ See *Reform of the Interstate Access Charge Rules*, RM-8356, Comments in Support of GTE, filed November 1, 1993.

⁶ *Second Further Notice of Proposed Rulemaking, Price Cap Performance Review of Local Exchange Carriers*, CC Docket No. 94-1, FCC 95-393, released, Sept. 20, 1995 at ¶69.

Reform of the access charge structure cannot be done in a piecemeal fashion, as suggested by the APCC Petition. Revisions to the access charge rules must take place under a broad examination of the impact of technological changes, the evolution of new telecommunications services, the convergence of different telecommunications delivery mechanisms, the treatment of subsidy flows inherent in the current rules and the resulting impacts on the development of competition. Nowhere is the need for change more apparent than the common line category. The Commission's staff recognized more than two years ago that the existing common line rate elements are not reasonably related to economic costs, sends false signals to the marketplace, and could potentially result in underutilization of the telecommunications network.⁷ Accordingly, the Commission should refrain from acting on APCC's Petition until it conducts a comprehensive review of the entire access structure impacting all market participants, not just IPPs.


⁷ See *Federal Perspectives on Access Charge Reform, A Staff Analysis*, April 30, 1993 at 60.

CONCLUSION

APCC has not justified the need to initiate a rulemaking proceeding to exempt IPPs from payment of the EUCL charge. The Commission should not make piecemeal changes to access charge rules but instead, should act promptly to initiate a comprehensive proceeding to reform all Part 69 rules.

Respectfully submitted,

GTE Service Corporation and its
affiliated domestic telephone operating
companies

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 4th day of December, 1995 to the following parties:

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